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SERVICE DATE - JANUARY 19, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 574X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--IN  
HARLAN COUNTY, KY

Decided: January 17, 2001

On June 23, 1999, a decision and notice of interim trail use or abandonment (NITU) was served, authorizing a 180-day period for the Harlan County Fiscal Court (HCFC) to negotiate an interim trail use/rail banking agreement with CSX Transportation, Inc. (CSXT) for an approximately 1.05-mile line of railroad between milepost OYC-250.40 at Evarts and milepost OYC-251.45 at Woods, in Harlan County, KY.<sup>1</sup> At CSXT's request, the negotiating period under the NITU was extended by decisions served December 28, 1999, March 13, 2000, and June 13, 2000. The latest extension was scheduled to expire on December 11, 2000.

On December 18, 2000, CSXT filed a letter stating that it is willing to negotiate with HCFC for interim trail use. By facsimile received on January 11, 2001, and letter-request filed on January 16, 2001, CSXT requested an extension of the NITU negotiating period for an additional six months or until June 11, 2001.<sup>2</sup>

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.<sup>3</sup> Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir.

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<sup>1</sup> Notice of the exemption was served and published in the Federal Register on May 21, 1999 (64 FR 27852).

<sup>2</sup> Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company--Abandonment Exemption--In Jackson, Victoria and Wharton Counties, TX, Docket No. AB-12 (Sub-No. 162X) (STB served May 29, 1996).

<sup>3</sup> See Rail Abandonments Supplement Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Missouri Pacific Railroad Company--Abandonment in OK, Docket No. AB-3 (Sub-No. 63) (ICC served Jan. 2, 1990); and St. Louis Southwestern Railway Company--Abandonment in Smith and Cherokee Counties, TX, 9 I.C.C.2d 406 (1992).

1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended to June 11, 2001.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The negotiating period under the NITU is extended to June 11, 2001.
2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary